

1 Peter Dubowsky, Esq.  
2 Nevada Bar No. 4972  
3 DUBOWSKY LAW OFFICE, CHTD.  
330 South Third Street  
3 Suite 680  
4 Las Vegas, Nevada 89101  
(702) 360-3500  
5 Fax (702) 360-3515  
Attorney for Defendant  
Stephens and Michaels Associates, Inc.

7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**

10 TIM TOTH ) Case No.: 2:13-CV-00372-GMN-VCF  
11 Plaintiff, )  
12 vs. )  
13 STEPHENS AND MICHAELS)  
ASSOCIATES, INC.; and MEAGAN)  
JAFFARIAN, inclusive, )  
15 Defendants )  
16

17 **DEFENDANT SMA'S ANSWER TO PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

18 Defendant, STEPHENS AND MICHAELS ASSOCIATES, INC. ("Defendant  
19 SMA"), by and through its counsel of record, Peter Dubowsky, Esq. of the DUBOWSKY  
20 LAW OFFICE, CHTD., hereby Answers the First Amended Complaint of Plaintiff, TIM  
21 TOTH, admitting, denying, and alleging as follows:

22 **JURIDICTION**

23 1. Defendant SMA DENIES each and every allegation contained in Paragraph  
24 1 of the First Amended Complaint.

2. Defendant SMA is without information and belief as to the allegations contained in Paragraph 4 of the First Amended Complaint and therefore denies the same.

## PARTIES

3. Defendant SMA is without information and belief as to the allegations contained in Paragraph 5 of the First Amended Complaint and therefore denies the same.

4. Defendant SMA admits the allegation contained in Paragraph 6 of the First Amended Complaint.

5. Defendant SMA admits the allegation contained in Paragraph 7 of the First Amended Complaint.

6. Defendant SMA DENIES each and every allegation contained in Paragraph 8 of the First Amended Complaint.

## **ALLEGATIONS APPLICABLE TO ALL COUNTS**

## The Debt

7. Defendant SMA admits the allegation contained in Paragraph 9 of the First Amended Complaint.

8. Defendant SMA DENIES each and every allegation contained in Paragraph 10 of the First Amended Complaint.

9. Defendant SMA DENIES each and every allegation contained in Paragraph 11 of the First Amended Complaint.

10. Defendant SMA DENIES each and every allegation contained in Paragraph  
12 of the First Amended Complaint.

1 **STEPHENS AND MICHAELS Engages in Harassment and Abusive Tactics**  
2 **FACTS**

3 11. Defendant SMA DENIES each and every allegation contained in Paragraph  
4 13 of the First Amended Complaint.

5 12. Defendant SMA DENIES each and every allegation contained in Paragraph  
6 14 of the First Amended Complaint.

7 13. Defendant SMA DENIES each and every allegation contained in Paragraph  
8 15 of the First Amended Complaint.

9 14. Defendant SMA DENIES each and every allegation contained in Paragraph  
10 16 of the First Amended Complaint.

11 15. Defendant SMA DENIES each and every allegation contained in Paragraph  
12 17 of the First Amended Complaint.

13 16. Defendant SMA DENIES each and every allegation contained in Paragraph  
14 18 of the First Amended Complaint.

15 17. Defendant SMA DENIES each and every allegation contained in Paragraph  
16 19 of the First Amended Complaint.

18 18. Defendant SMA DENIES each and every allegation contained in Paragraph  
19 20 of the First Amended Complaint.

20 **PLAINTIFF SUFFERED ACTUAL DAMAGES**

21 19. Defendant SMA DENIES each and every allegation contained in Paragraph  
22 21 of the First Amended Complaint.

23 20. Defendant SMA DENIES each and every allegation contained in Paragraph  
24 22 of the First Amended Complaint.

21. Defendant SMA DENIES each and every allegation contained in Paragraph  
23 of the First Amended Complaint.

## **RESPONDEAT SUPERIOR LIABILITY**

22. Defendant SMA DENIES each and every allegation contained in Paragraph  
24 of the First Amended Complaint.

23. Defendant SMA DENIES each and every allegation contained in Paragraph  
25 of the First Amended Complaint.

24. Defendant SMA DENIES each and every allegation contained in Paragraph  
26 of the First Amended Complaint.

25. Defendant SMA DENIES each and every allegation contained in Paragraph  
27 of the First Amended Complaint.

## COUNT I

## **Violations of the FDCPA – 15 U.S.C. § 1692, et seq.**

26. As to Paragraph 40 of the First Amended Complaint, Defendant SMA incorporates by reference all the above paragraphs of this Answer as though fully stated herein.

27. Defendant SMA DENIES each and every allegation contained in Paragraph 41 of the First Amended Complaint.

28. Defendant SMA DENIES each and every allegation contained in Paragraph 42 of the First Amended Complaint.

29. Defendant SMA DENIES each and every allegation contained in Paragraph 43 of the First Amended Complaint.

30. Defendant SMA DENIES each and every allegation contained in Paragraph 44 of the First Amended Complaint.

31. Defendant SMA DENIES each and every allegation contained in Paragraph 45 of the First Amended Complaint.

32. Defendant SMA DENIES each and every allegation contained in Paragraph 46 of the First Amended Complaint.

33. Defendant SMA DENIES each and every allegation contained in Paragraph 47 of the First Amended Complaint.

**COUNT I.**

WHEREFORE, Defendant SMA, STEPHENS AND MICHAELS ASSOCIATES, INC., prays that Plaintiff go and take nothing by way of their First Amended Complaint, Claims for Relief, and Prayer for Relief, alleged therein.

## AFFIRMATIVE DEFENSES

## FIRST AFFIRMATIVE DEFENSE

The Plaintiff's First Amended Complaint fails to state any cause of action upon which relief may be granted.

## SECOND AFFIRMATIVE DEFENSE

To the extent any FDCPA violation would even exist, the Defendant SMA would not be liable because the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

### THIRD AFFIRMATIVE DEFENSE

Defendant SMA has not violated the laws or regulations of the United States with regard to any Plaintiff or any other individual or member of this action.

#### FOURTH AFFIRMATIVE DEFENSE

Plaintiff's First Amended Complaint, and each alleged cause of action set forth therein, may be barred by the doctrines of accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, and waiver by reason of Plaintiff's conduct, actions and omissions.

## FIFTH AFFIRMATIVE DEFENSE

Neither Defendant SMA nor its servants or agents failed to satisfy any duty owed with regard to Plaintiff.

## SIXTH AFFIRMATIVE DEFENSE

The Plaintiff brought this action in bad faith and for the purpose of harassment.

## SEVENTH AFFIRMATIVE DEFENSE

Neither Defendant SMA nor its servants or agents caused Plaintiff to suffer any emotional distress, indignity, embarrassment, humiliation, annoyance, inconvenience, or caused any harm, loss or damages whatsoever to Plaintiff.

## EIGHTH AFFIRMATIVE DEFENSE

Defendant SMA did not engage in any behavior the natural consequence of which was to harass, oppress or abuse the Plaintiff.

### NINTH AFFIRMATIVE DEFENSE

Defendant SMA did not engage in any false, deceptive or misleading behavior.

## TENTH AFFIRMATIVE DEFENSE

Defendant SMA did not employ false representations and deceptive means.

## ELEVENTH AFFIRMATIVE DEFENSE

Defendant SMA did not use unfair and unconscionable means.

## TWELTH AFFIRMATIVE DEFENSE

Pursuant to F.R.C.P 11, as amended, all possible affirmative defenses may not have been alleged herein, insofar as sufficient facts were not available after reasonable inquiry upon the filing of this Defendant's Answer; therefore, Defendant reserves the right to amend his Answer to allege additional affirmative defenses if subsequent investigation warrants.

Dated: November 13, 2014

# DUBOWSKY LAW OFFICE, CHTD.

By: /s/Peter Dubowsky

Peter Dubowsky, Esq.

Nevada Bar No. 4972

330 South Third Street Suite 680

Las Vegas, Nevada 89101

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Fax (702) 360-3515

Attorney for Defendant

Stephens and Michaels Associates, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of November, 2014 the DEFENDANT SMA'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT was deposited in a sealed envelope, postage pre-paid, in the United States Mail, addressed as follows:

David Krieger, Esq.  
HAINES & KRIEGER, LLC  
8985 South Eastern Avenue, Suite 130  
Las Vegas, NV 89123  
Attorney for Plaintiff

/s/William Thompson  
An employee of Dubowsky Law Office, Chtd

DUBOWSKY LAW OFFICE, CHTD.